

Calendar No. 1926

82D CONGRESS
2d Session

SENATE

REPORT
No. 2001

COMMANDER JOHN J. O'DONNELL

JULY 1 (legislative day JUNE 27), 1952.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2989]

The Committee on the Judiciary, to which was referred the bill, (S. 2989), for the relief of Commander John J. O'Donnell, United States Naval Reserve, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of this private bill is to pay the sum of \$252.67 to Commander John J. O'Donnell, United States Naval Reserve, in full settlement of his claims against the United States for pay and allowances for active training duty actually performed by him for the period June 19 to 29, 1950, inclusive, in compliance with paragraph 1 of the appropriate duty orders issued June 7, 1950, by the commandant, Thirteenth Naval District, Seattle, Wash.

STATEMENT

Commander O'Donnell, an officer of the United States Naval Reserve, accompanied the U. S. S. *Shields* (DD 596) as pilot on a cruise with that vessel from Seattle, Wash., to Alaska and back during the period from June 19 to 29, 1950, inclusive. The pilotage service was authorized by appropriate duty orders issued to Commander O'Donnell on June 7, 1950, by the commandant of the Thirteenth Naval District.

But the commander was unable to receive his pay and allowances for this tour of duty on the U. S. S. *Shields* since the Comptroller General subsequently held that he had performed, prior to June 1950, the maximum period of active training duty permitted under applicable naval regulations during the fiscal year 1950. Another reason assigned

by the Comptroller General was that the authority had never been granted to the commander by the Chief of Naval Personnel, as required by paragraph 6, Tables of Organization for the Naval Reserve, Fiscal 1950, to perform active training duty with pay in excess of the training duty periods otherwise authorized in the regulations. The Comptroller General further held that the orders of June 7, 1950, to Commander O'Donnell did not change his status, as a member of the Naval Reserve, from an inactive duty status to that of active training duty. The resulting decision of the Comptroller General was that there was no authority of law to allow him active training duty pay and allowances for the period from June 19 to 29, 1950.

This committee can readily understand the decision of the Comptroller General and that decision is undeniably correct. The executive departments are charged with the execution of the general laws of the United States and it is the duty of the executive department to deny redress to those persons not coming within the terms of the law. When an individual is aggrieved by the denial of relief by a Federal department or agency, he has, under our Federal Constitution, a right to petition Congress for a redress of any such grievance. This is the avenue followed by Commander O'Donnell.

Both the Department of the Navy and the Department of Justice recommended that this claim be paid. The basis of each recommendation is, in substance, that the commander had actually done the work; he had performed the duties specified and the United States had received the full value of such services. Consequently there was no reason why the United States should not compensate the claimant for his efforts.

In adopting the recommendations of these two departments the committee wishes to express one additional conclusion. If there had been any indication that the claimant had intentionally avoided obtaining the authority of the Chief of Naval Personnel as required by paragraph 6, Tables of Organization for the Naval Reserve, fiscal 1950, the committee would not undertake to relieve the claimant. In short, if the claimant had intentionally avoided obtaining the required authority, the committee would not favorably consider legislation which would relieve the claimant from his own misconduct. But no such misconduct has been alleged here, and consequently the committee recommends that this bill be considered favorably.

The report of the Department of the Navy, dated June 6, 1952, and the report of the Department of Justice, dated June 24, 1952, are set forth in full below.

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., June 6, 1952.

HON. JAMES P. McGRANERY,
The Attorney General, Washington, D. C.

MY DEAR MR. ATTORNEY GENERAL: Reference is made to your letter of April 14, 1952, requesting an expression of the views of the Department of the Navy on S. 2989, a bill for the relief of Commander John J. O'Donnell, United States Naval Reserve.

The purpose of this bill is to authorize the Secretary of the Treasury to pay to Commander John J. O'Donnell, United States Naval Reserve, the sum of \$252.67 in full settlement of his claim against the United States for pay and allowances

for active training duty performed by him for the period of June 19 to 29, 1950, inclusive, in compliance with appropriate duty orders issued June 7, 1950, by the commandant, Thirteenth Naval District, Seattle, Wash.

The records of the Department of the Navy show Commander O'Donnell, an officer of the United States Naval Reserve, accompanied the U. S. S. *Shields* (DD 596) as pilot on the cruise of that vessel from Seattle, Wash., to Alaska and return during the period June 19 to 29, 1950, and that the pilotage service was authorized by appropriate duty orders issued to Commander O'Donnell on June 7, 1950, by the commandant of the Thirteenth Naval District.

Commander O'Donnell was unable to receive pay and allowances for the duty which he performed as pilot of the U. S. S. *Shields* as the Comptroller General held that he had performed, prior to the month of June 1950, the maximum period of active training duty permitted under applicable naval regulations during the fiscal year 1950, and that authority had never been granted to him by the Chief of Naval Personnel, as was required by paragraph 6, Tables of Organization for the Naval Reserve, Fiscal 1950, to perform active training duty with pay in excess of the training duty periods otherwise authorized in the regulations. The Comptroller General further held that as a consequence of these facts the orders of June 7, 1950, did not change the status of Commander O'Donnell as a member of the Naval Reserve from an inactive duty status to that of active training duty status and that, therefore, there was no authority of law to allow him active training duty pay and allowances for the period June 19 to 29, 1950.

Although Commander O'Donnell performed the duties for which payment is claimed under an appropriate duty assignment, the duties which he actually performed involved full time on board the U. S. S. *Shields* during the cruise from Seattle, Wash., to the Alaskan ports and return.

The Department of the Navy would favor enactment of this bill inasmuch as the Government realized a benefit from the services rendered by Commander O'Donnell on board the U. S. S. *Shields*, and as he would have been entitled to the pay and allowances claimed for this service had the prescribed procedure been followed in the issuance of the orders to him for this duty.

For the Secretary of the Navy.

Sincerely yours,

G. L. RUSSELL,
*Rear Admiral, United States Navy,
Judge Advocate General of the Navy.*

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, June 24, 1952.

HON. PAT McCARRAN,
*Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.*

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 2989) for the relief of Commander John J. O'Donnell, United States Naval Reserve.

The bill would provide for payment of the sum of \$252.67 to Commander John J. O'Donnell, United States Naval Reserve, in full settlement of his claims against the United States for pay and allowances for active training duty actually performed by him for the period June 19 to 29, 1950, inclusive, in compliance with paragraph 1 of appropriate duty orders issued June 7, 1950, by the commandant, Thirteenth Naval District, Seattle, Wash.

In compliance with your request, a report was obtained from the Department of the Navy concerning this legislation. According to that report, which is enclosed, it appears that claimant, a United States Naval Reserve officer, piloted the U. S. S. *Shields* on that vessel's cruise from Seattle, Wash., to Alaska and return, during the period June 19 to 29, 1950, and that such pilotage service was authorized by appropriate duty orders issued to claimant on June 7, 1950, by the commandant of the Thirteenth Naval District.

Claimant was unable to receive pay and allowances for the pilotage duty which he performed because the Comptroller General held that he had performed, prior to June 1950, the maximum period of active training duty permitted under applicable naval regulations during the fiscal year 1950, and that authority had never been granted him by the Chief of Naval Personnel as was required by paragraph 6, Tables of Organization for the Naval Reserve, fiscal 1950, to perform

active training duty with pay in excess of the training duty periods otherwise authorized in the regulations. The Comptroller General further held that consequently the orders of June 7, 1950, did not change claimant's status as a member of the Naval Reserve from an inactive duty status to that of active training duty status, and that accordingly, there was no authority of law to allow him active training duty pay and allowances for the period in question.

The report states that although claimant performed the duty in question under an appropriate duty assignment, the duties which he actually performed involved full time on board the vessel during the cruise from Seattle, Wash., to Alaska and return. The Department of the Navy states that it would favor enactment of this bill inasmuch as the Government realized a benefit from the services rendered by claimant and as he would have been entitled to the pay and allowances claimed for this service had the prescribed procedure been followed in the issuance of the orders to him for this duty.

The Department of Justice concurs in the views of the Department of the Navy.

The Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Sincerely,

A. DEVITT VANECH,
Deputy Attorney General.

○